

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0610-WQ-E TCEQ ID: RN105444368 CASE NO.: 35717
RESPONDENT NAME: 284 San Gabriel, L.L.C.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 284 San Gabriel Rio Ancho, 2801 County Road 322, Bertram, Burnet County</p> <p>TYPE OF OPERATION: Construction site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint was received on January 11, 2008, alleging that the Respondent did not have a storm water permit posted or erosion controls along drainage. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received but the complainant has not expressed the desire to protest this action or speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on August 11, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Jon Branigan, Owner, 284 San Gabriel, L.L.C., P.O. Box 814, Liberty Hill, Texas 78642 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: January 11, 2008</p> <p>Date of Investigation Relating to this Case: January 11, 2008</p> <p>Date of NOV/NOE Relating to this Case: February 7, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failure to obtain authorization to discharge storm water associated with construction activities [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p>	<p>Total Assessed: \$750</p> <p>Total Deferred: \$150 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$600</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent submitted a copy of the Notice of Intent and a statement that a Storm Water Pollution Prevention Plan has been developed and implemented on January 26, 2008.</p>

Additional ID No(s): STW TXR15JT41



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

DATES

Assigned

19-Feb-2008

PCW

9-Apr-2008

Screening

9-Apr-2008

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent 284 San Gabriel, L.L.C.

Reg. Ent. Ref. No. RN105444368

Facility/Site Region 11-Austin

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 35717

Docket No. 2008-0610-WQ-E

Media Program(s) Water Quality

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator Heather Brister

EC's Team Enforcement Team 1

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0% Enhancement

Subtotals 2, 3, & 7 \$0

Notes

No change due to no previous compliance history.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

25% Reduction

Subtotal 5 \$250

Before NOV

NOV to EDP RP/Settlement Offer

Extraordinary

Ordinary

N/A

(mark with x)

Notes

The Respondent submitted a copy of the Notice of Intent and a statement that a Storm Water Pollution Prevention Plan has been developed and implemented on January 26, 2008.

Total EB Amounts

\$4

Approx. Cost of Compliance

\$2,000

0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6 \$0

SUM OF SUBTOTALS 1-7

Final Subtotal \$750

OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$750

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$750

DEFERRAL

20%

Reduction

Adjustment -\$150

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$600

Screening Date 9-Apr-2008

Docket No. 2008-0610-WQ-E

PCW

Respondent 284 San Gabriel, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 35717

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN105444368

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
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NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No change due to no previous compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 9-Apr-2008 Respondent 284 San Gabriel, L.L.C. Case ID No. 35717 Reg. Ent. Reference No. RN105444368 Media [Statute] Water Quality Enf. Coordinator Heather Brister Violation Number <input type="text" value="1"/> Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c). Violation Description Failed to obtain authorization to discharge storm water associated with construction activities, as documented during an investigation conducted on January 11, 2008.	Docket No. 2008-0610-WQ-E PCW <small>Policy Revision 2 (September 2002) PCW Revision February 29, 2008</small>																				
Base Penalty <input style="width: 100px;" type="text" value="\$10,000"/>																					
>> Environmental, Property and Human Health Matrix																					
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 20%;">Major</th> <th style="width: 20%;">Moderate</th> <th style="width: 20%;">Minor</th> <th style="width: 30%;"></th> </tr> </thead> <tbody> <tr> <td>Release</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> <tr> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td>Percent <input style="width: 50px;" type="text" value="0%"/></td> </tr> </tbody> </table>		Major	Moderate	Minor		Release					Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input style="width: 50px;" type="text" value="0%"/>
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Violation Events																					
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Economic Benefit (EB) for this violation																					
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Economic Benefit Worksheet

Respondent 284 San Gabriel, L.L.C.
Case ID No. 35717
Reg. Ent. Reference No. RN105444368
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$2,000	11-Jan-2008	26-Jan-2008	0.0	\$4	n/a	\$4
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of preparing and implementing a Storm Water Pollution Prevention Plan and submittal of a Notice of Intent. Date required is the date of investigation and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$4

Compliance History

Customer/Respondent/Owner-Operator: CN603314097 284 San Gabriel, L.L.C. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105444368 284 SAN GABRIEL RIO ANCHO Classification: AVERAGE BY SITE Rating: 3.01
ID Number(s): STORMWATER PERMIT TXR15JT41
Location: 2801 COUNTY ROAD 322, BERTRAM, BURNET COUNTY, TEXAS, 78605 Rating Date: September 01 07
Repeat Violator: No
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: April 08, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 08, 2003 to April 08, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Heather Brister Phone: (254) 761-3048

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
284 SAN GABRIEL, L.L.C.
RN105444368**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0610-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding 284 San Gabriel, L.L.C. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a construction site at 2801 County Road 322 in Bertram, Burnet County, Texas (the "Site").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 12, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Hundred Fifty Dollars (\$750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Hundred Dollars (\$600) of the administrative penalty and One Hundred Fifty Dollars

(\$150) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent submitted a copy of the Notice of Intent and a statement that a Storm Water Pollution Prevention Plan has been developed and implemented on January 26, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain authorization to discharge storm water associated with construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on January 11, 2008.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: 284 San Gabriel, L.L.C., Docket No. 2008-0610-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

7/18/2008

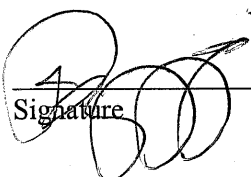
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.


In addition, any falsification of any compliance documents may result in criminal prosecution.




Signature

5.10.08

Date



Name (Printed or typed)
Authorized Representative of
284 San Gabriel, L.L.C.



Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

RECEIVED
4/28/08

